

### REMARKS

#### Rejection Under 35 U.S.C. §103(a)

Claims 1-2 were rejected under 35 U.S.C. §103(a) as being unpatentable over Seth et al. (WO 96/25507, 1996) in view of Sato et al. (Mol. Cell Neurosci. 12:65-78, 1998) and Anton et al. (J. Virol. 69:4600-4606, 1995). The rejection is moot because claims 1 and 2 have been cancelled.

#### Rejections Under 35 USC §112, 1<sup>st</sup> Paragraph

Claims 2-3 and 5-10 was rejected under 35 U.S.C. §112, first paragraph, for lack of enablement. This rejection is respectfully traversed.

Claims 2-3, 5-8 have been canceled. Claims 9-10 are drawn to a method of sensitizing tumor cells to radiotherapy by intratumoral administration of (i) an adenoviral vector encoding a pro-apoptotic *bax* gene which is placed downstream of a loxP excision cassette and (ii) a vector encoding a cre recombinase.

The Examiner contends that the scope of enablement is as follows: the specification is enabling for methods of treating glioma by intratumoral administration of an inducible recombinant

adenovirus encoding a pro-apoptotic bax gene placed downstream of a loxP excision cassette and intratumoral administration of an adenoviral vector encoding cre recombinase followed by the administration of radiation.

Applicant submits that the method of the present invention is not limited to treatment of glioma. Once the method is established by intratumoral administration, the application of the claimed method is not limited to or dependent on a particular type of tumor. The method is applicable to any tumor cells accessible to intratumoral administration of adenoviral vectors. One of ordinary skill in the art would not expect the cytotoxic effects of pro-apoptotic bax gene expression are limited to a particular type of tumor. This is supported by the data that show induction of apoptosis by bax gene in other tumor cells such as human ovarian tumor cells (Examples 6-9, 20, 21, 30 and 31).

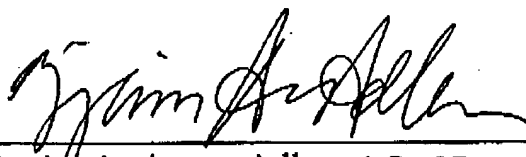
Based on the data contained herein, Applicant respectfully submits that the claims on the method of sensitizing tumor cells to radiotherapy have reasonable correlation to the scope of the enablement provided by the specification. A person having ordinary skill in this art would have a reasonable expectation of successfully using the technology recited by claim 9 based on a fair reading of

Applicant's specification. Accordingly, Applicant respectfully requests that the rejection of claims 9-10 under 35 U.S.C. §112, first paragraph, be withdrawn.

This is intended to be a complete response to the Final Office Action mailed July 21, 2003. Applicant submits that the pending claims are now in condition for allowance. If any issues remain outstanding, the Examiner is respectfully requested to telephone the undersigned attorney of record for immediate resolution.

Respectfully submitted,

Date: Sept 16, 2003



Benjamin Aaron Adler, Ph.D., J.D.  
Registration No. 35,423  
Counsel for Applicant

ADLER & ASSOCIATES  
8011 Candle Lane  
Houston, Texas 77071  
(713) 270-5391 (tel.)  
(713) 270-5361 (facs.)  
badler1@houston.rr.com

RECEIVED  
CENTRAL FAX CENTER  
SEP 17 2003

OFFICIAL